

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/19/2001

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-013688

FILED: _____

JUDY BLAIR

STEPHEN R COOPER

v.

AREK FRESSADI, et al.

JAMES J PALECEK

PHX JUSTICE CT-E1
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the receipt of Appellant's reply Memorandum on November 26, 2001. Appellant has requested Oral Argument. Oral Argument being unnecessary to a determination of this appeal,

IT IS ORDERED denying Appellant's request for Oral Argument.

This Court has considered and reviewed the record of the proceedings from the East Phoenix #1 Justice Court, the Memoranda and Appellant's submission of a transcript of the Civil trial held in the East Phoenix #1 Justice Court.

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Appellant raises three issues on appeal: (1) Did Appellee, Judy Blair, have standing to sue even though she is not a licensed contractor? (2) Was venue proper in the East Phoenix #1 Justice Court? (3) Was sufficient evidence presented to support the trial court's ruling in favor of Appellee? All of the questions raised by Appellant on appeal are factual issues. Even the question whether Appellee is a licensed contractor requires consideration of the evidence presented because Appellee maintains that Arizona Law does not require her to be a licensed contractor to sue for breach of contract by Appellant.¹ At the conclusion of the trial, the trial court entered judgment in favor of Appellee Blair in the amount of \$1,692.28 for breach of contract, fees of \$2,992.50, and court costs of \$335.50. Appellants filed a timely Notice of Appeal in this case.

When reviewing the sufficiency of the evidence, an appellate court must not re-weight the evidence to determine if it would reach the same conclusion as the original trier of fact.² All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Appellant.³ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Appellant.⁴ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁵ When the sufficiency of evidence to support a judgment is questioned on

¹ See A.R.S. Section 32-1121(4) and (9).

² State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

³ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁴ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁵ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

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appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁶ The Arizona Supreme Court has explained in State v. Tison⁷ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁸

This Court finds that the trial court's finding and judgment was not clearly erroneous and was supported by substantial evidence. Specifically, Appellee Judy Blair testified Appellant installed the cabinets in the house.⁹ Ms. Blair also testified her firm builds furniture not kitchen cabinets.¹⁰ The record also reveals that no objection to the court's venue was made prior to the commencement of the trial. Finally, the record also reflects that Appellant had the opportunity to inspect all of the cabinets at Appellee's place of business prior to their delivery. Appellant made no objections to their workmanship or color. After they had been delivered to Appellant's residence, Appellant made no objection to the cabinets.¹¹

IT IS THEREFORE ORDERED affirming the judgment in favor of Appellee in the East Phoenix #1 Justice Court.

⁶ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁷ SUPRA.

⁸ Id. At 553, 633 P.2d at 362.

⁹ Trial Transcript, page 8.

¹⁰ Id. at page 6.

¹¹ Id. at page 6, 8.

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IT IS FURTHER ORDERED remanding this matter back to the
East Phoenix #1 Justice Court for further and future
proceedings.